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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,908	10/29/2003	Jon Faiz Kayyem	A-67499-2/RMS/RMK/SPL/463	9212
7590	03/13/2006		EXAMINER	
Robin M. Silva DORSEY & WHITNEY LLP Suite 3400 Four Embarcadero Center San Francisco, CA 94111-4187			LU, FRANK WEI MIN	
			ART UNIT	PAPER NUMBER
			1634	
			DATE MAILED: 03/13/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/697,908	KAYYEM, JON FAIZ	
	Examiner	Art Unit	
	Frank W Lu	1634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 July 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/2006</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's response to the office action filed on July 8, 2005 has been entered. The claims pending in this application are claims 1-8. Rejection and/or objection not reiterated from the previous office action are hereby withdrawn.

Claim Objections

2. Claim 1 is objected to because of the following informality: no period should appear after the label of each step, e.g., "I." should be --I--.

3. Claims 2-8 are objected to because of the following informality: "A method" should be "The method"

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Written Description

Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

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art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The recitation “applying an initiation signal to an electrode within an evacuated tube” is added to the newly amended independent claim 1. Although the specification describes that VACUTAINER® brand evacuated tubes (see page 6, first paragraph), the specification fails to define or provide any disclosure to support that an electrode is within an evacuated tube. Furthermore, in applicant’s remarks filed on July 8, 2005, applicant does not indicate which part in the specification supports such claim recitation.

MPEP 2163.06 notes “IF NEW MATTER IS ADDED TO THE CLAIMS, THE EXAMINER SHOULD REJECT THE CLAIMS UNDER 35 U.S.C. 112, FIRST PARAGRAPH - WRITTEN DESCRIPTION REQUIREMENT. *IN RE RASMUSSEN*, 650 F.2D 1212, 211 USPQ 323 (CCPA 1981).” MPEP 2163.02 teaches that “Whenever the issue arises, the fundamental factual inquiry is whether a claim defines an invention that is clearly conveyed to those skilled in the art at the time the application was filed...If a claim is amended to include subject matter, limitations, or terminology not present in the application as filed, involving a departure from, addition to, or deletion from the disclosure of the application as filed, the examiner should conclude that the claimed subject matter is not described in that application.” MPEP 2163.06 further notes “WHEN AN AMENDMENT IS FILED IN REPLY TO AN OBJECTION OR REJECTION BASED ON 35 U.S.C. 112, FIRST PARAGRAPH, A STUDY OF THE ENTIRE APPLICATION IS OFTEN NECESSARY TO DETERMINE WHETHER OR NOT “NEW MATTER” IS INVOLVED. *APPLICANT SHOULD THEREFORE SPECIFICALLY POINT OUT THE SUPPORT FOR ANY AMENDMENTS MADE TO THE DISCLOSURE*” (emphasis added).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Duong *et al.*, (US Patent No. 6,740,518 B1, priority date: September 17, 1998).

The applied reference has a common inventor, Jon Faiz Kayyem with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Duong *et al.*, teach a method of determining the presence of target analytes in a sample comprising: a) applying said sample to an array comprising a plurality of electrodes, wherein at least one electrode comprises an assay complex comprising: i) a capture binding ligand covalently attached to said electrode; ii) a target analyte; and iii) an electron transfer moiety wherein each electrode comprises a self-assembled monolayer; b) applying an input waveform to said electrode to generate an output waveform comprising at least one harmonic component, having a harmonic number greater than or equal to two; c) detecting said output waveform at said electrode; and d) analyzing said harmonic component with harmonic number greater than or equal to two to determine the presence of said target analytes (see column 109, claim 1 and column 10, second paragraph).

Regarding claim 1, according to dictionary, the word “evacuate” is defined as “to empty or remove the content”, “evacuated tube” recited in claim 1 is considered as an empty tube. Since Duong *et al.*, teach applying an input waveform to said electrode to generate an output waveform

comprising at least one harmonic component, having a harmonic number greater than or equal to two wherein said electrode in circuit boards in an injection molded sample chamber comprises an assay complex comprising: i) a capture binding ligand covalently attached to said electrode; ii) a target analyte; and iii) an electron transfer moiety wherein each electrode comprises a self-assembled monolayer after hybridization (see column 10, second paragraph, columns 101-103, and column 109, claim 1), Duong *et al.*, disclose applying an initial signal (ie., an input waveform) to an electrode within an evacuated tube (ie., an electrode from a circuit board in the injection molded sample chamber, see column 103) comprising an electrode comprising a self-assembled monolayer and an assay complex comprising a capture binding ligand, said target analyte, and an electron transfer moiety as recited in claim 1. Since Duong *et al.*, teach detecting said output waveform at said electrode and analyzing said harmonic component with harmonic number greater than or equal to two to determine the presence of said target analytes (see column 109, claim 1) and the input and output signals taught by Duong *et al.*, are used to measure electron transfer of electron transfer moiety, Duong *et al.*, disclose detecting electron transfer between said electrode and said electron transfer moiety as recited in claim 1.

Regarding claim 2, Duong *et al.*, teach that said sample is blood (see column 5, lines 19-38).

Regarding claims 3 and 4, Duong *et al.*, teach that said self-assembled monolayer comprises insulators and an EFS (see columns 12 and 13).

Regarding claim 5, Duong *et al.*, teach that said target analyte is nucleic acid (see column 109, claim 2).

Regarding claim 6, Duong *et al.*, teach that said capture binding ligand is a capture probe (see column 26, lines 47-60).

Regarding claim 7, Duong *et al.*, teach that said assay complex comprises a label probe comprising said electron transfer moiety (see column 37, lines 26-52).

Regarding claim 8, Duong *et al.*, teach that said electron transfer moiety is ferrocene (see column 41).

Therefore, Duong *et al.*, teach all limitations recited in claims 1-8.

Response to Arguments

In page 5, last paragraph of applicant's remarks, applicant argues that Duong et al. does not teach an evacuated tube.

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection. According to dictionary, the word "evacuate" is defined as "to empty or remove the content", "evacuated tube" recited in claim 1 is considered as an empty tube. Since Duong *et al.*, teach applying an input waveform to said electrode to generate an output waveform comprising at least one harmonic component, having a harmonic number greater than or equal to two wherein said electrode in circuit boards in an injection molded sample chamber comprises an assay complex, Duong *et al.*, disclose applying an initial signal (ie., an input waveform) to an electrode within an evacuated tube (ie., an electrode from a circuit board in the injection molded sample chamber, see column 103).

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 13 of U.S. Patent No. 6,740,518 B1 in view of Rubinstein *et al.*, (US Patent NO. 5,108,573, published on April 28, 1992).

Regarding claims 1 and 5, steps a) and b) of claim 1 of U.S. Patent No. 6,740,518 B1 teaches applying a sample to an array comprising a plurality of electrodes and applying an input waveform to said electrode to generate an output waveform. Since the word "evacuate" is defined as "to empty or remove the content", "evacuated tube" recited in claim 1 of this instant application is considered as an empty tube. Since U.S. Patent No. 6,740,518 B1 indicates that a circuit board comprising a plurality of electrodes (ie., the array) is in an injection molded sample chamber (see columns 102 and 103), steps a) and b) of claim 1 of U.S. Patent No. 6,740,518 B1

must disclose applying an initiation signal (ie., an input waveform) to an electrode within an evacuated tube (ie., an electrode from a circuit board in the injection molded sample chamber) as recited in step a) of claim 1 of this instant application. Since U.S. Patent No. 6,740,518 B1 indicates that AC input (ie., an initiation signal) and output waveforms are used to detect electron transfer (see columns 96 and 97), steps c) and d) of claim 1 and claim 13 of U.S. Patent No. 6,740,518 B1 teach b) of claim 1 in this instant application. Claim 2 of U.S. Patent No. 6,740,518 B1 teaches all limitations of claim 5 of this instant application.

Claims 1, 2, and 13 of U.S. Patent No. 6,740,518 B1 do not disclose a self-assembled monolayer as recited in claim 1 of this instant application.

Rubinstein *et al.*, teach that the molecules of a self-assembled monolayer on a metal electrode facilitate and regulate the bonding between the modified metal surface and the growing phase of the conducting polymer (see column 4, lines 16-30).

Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to have formed the method recited in claim 1 of this instant application by incorporating a self-assembled monolayer into an array complex recited in claim 1 in view of claims 1, 2, and 13 of U.S. Patent No. 6,740,518 B1 and Rubinstein *et al.*. One having ordinary skill in the art has been motivated to do so because incorporation of a self-assembled monolayer on a metal electrode would facilitate and regulate the bonding between the modified metal surface of the electrode and a conducting polymer (see Rubinstein *et al.*, column 4, lines 16-30). One having ordinary skill in the art at the time the invention was made would have been a reasonable expectation of success to incorporating a self-assembled monolayer into

an array complex recited in claim 1 in view of claims 1, 2, and 13 of U.S. Patent No. 6,7,40,518

B1 and Rubinstein *et al.*.

Response to Arguments

I. In page 7, second paragraph of applicant's remarks, applicant argues that “[I]n making an obviousness-type rejection, the Examiner can cite only analogous prior art. Applicants assert that Rubinstein is not analogous prior art. First, the Patent Office's classification of the references is evidence in determining their nonanalogy. *In re Ellis*, 476 F.2d 1370, 1372 (CCPA 1973). The Patent Office has assigned Rubinstein to class 204, whose rubric is ‘Chemistry: Electrical and Wave Energy’, while the Office has assigned Duong to class 435, ‘chemistry; Molecular Biology and Microbiology.’ Rubinstein thus addresses the electromagnetic properties of matter, a distinct and nonanalogous field of inquiry in comparison to the biologically significant molecules addressed by Duong. Second, a reference is from a nonanalogous field if the reference is not reasonably pertinent to the particular problem with which the present invention is concerned. See *In re Clay*. 966 F.2d, 656, 659 (Fed. Cir. 1992). Rubinstein teaches that the self-assembled monolayers is selected to ‘lower the energy of Polymer/substrate interactions’ and thus to ‘render []the surface ‘polymerophilic.’ Rubinstein, col. 2, 11. 31-35. On the other hand, the purpose of self-assembled monolayers in the instant application is ‘providing the benefits of shielding the electrode from solution components and reducing the amount of non-specific binding to the electrodes.’ Specification, p. 13, 11. 16-18. Self-assembled monolayers facilitate polymer binding in Rubinstein, while they hinder polymer binding in the present invention. Rubinstein is therefore not pertinent to the problems addressed by the instant application and is not analogous art”.

These arguments have been fully considered but they are not persuasive toward the withdrawal of the rejection. First, although MPEP 2141.01(a) states that “[P]atent Office classification of references and the cross-references in the official search notes of the class definitions are some evidence of ‘nonanalogy’ or ‘analogy’ respectively”, applicant has no evidence to show that the patents which have different classifications cannot be analogous art. For example, both classifications 435 and 536 are related to a nucleic acid such as a method for nucleic acid and a product of nucleic acid while a reference related to method for nucleic acid and a reference related to a product of nucleic acid can be considered as analogous art. Second, in response to applicant's argument that Rubinstein *et al.*, is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, U.S. Patent No. 6,740,518 B1 and Rubinstein *et al.*, are considered as analogous art because both references teach to coat a metal electrode (for Rubinstein *et al.*, see abstract).

II. In page 7, last paragraph bridging to page 8, first paragraph of applicant's remarks, applicant argues that “[T]he Examiner relies on the specification of Duong to contend that because Duong teaches a circuit board that is in an injection molded sample chamber, claim 1 of Duong discloses the use of a tissue collection device. However, the Examiner is respectfully reminded that ‘[w]hen considering whether the invention define in the claim of an application is an obvious variation of the invention defined in the claims of a patent, the disclosure of the patent may not be used as prior art.’” MPEP § 804IIB(1). The issue in a nonstatutory double

patenting rejection is “whether the differences in subject matter between the two claims render the claims patentably distinct.’ *Eli Lilly & Co. v Barr Labs., Inc*, 251 F.3d 955, 968 (Fed. Cir. 2001) (emphasis added). By referring to the injection molded sample chamber, the Examiner improperly relies on the disclosure of Duong. In effect, the Examiner is attempting to import limitations from the specification into the claims of Duong since claim 1 of Duong could be infringed by practicing the method through use of an may not in an injection molded sample chamber. The court in *In re Vogel*, 422 F.2d 438, 441 (CCPA 1970), stated that ‘the words in a claim are generally not limited in their meaning by what is shown in the disclosure’ Because the claims in Duong do not teach a tissue collection device, Duong, even in combination with Rubinstein, does not teach all the limitations of amended claim 1 of the instant application”.

These arguments have been fully considered but they are not persuasive toward the withdrawal of the rejection. First, portions of the specification can be used to provide support for the patent claims in the double patenting rejections. MPEP 804 states that “[T]he specification can * be used as a dictionary to learn the meaning of a term in the patent claim. **> *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999)(‘[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning.’); *Renishaw PLC v. Marposs Societa 'per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) (‘Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings.). See also MPEP § 2111.01.< Further, those portions of the specification which provide support for the patent claims may also be examined and considered when addressing the

issue of whether a claim in the application defines an obvious variation of an invention claimed in the patent. *In re Vogel*, 422 F.2d 438, 441-42, 164 USPQ 619, 622 (CCPA 1970). The court in *Vogel* recognized ‘that it is most difficult, if not meaningless, to try to say what is or is not an obvious variation of a claim,’ but that one can judge whether or not the invention claimed in an application is an obvious variation of an embodiment disclosed in the patent which provides support for the patent claim. According to the court, one must first ‘determine how much of the patent disclosure pertains to the invention claimed in the patent’ because only ‘[t]his portion of the specification supports the patent claims and may be considered.’ The court pointed out that ‘this use of the disclosure is not in contravention of the cases forbidding its use as prior art, nor is it applying the patent as a reference under 35 U.S.C. 103, since only the disclosure of the invention claimed in the patent may be examined.’” Since the word “evacuate” is defined as “to empty or remove the content”, “evacuated tube” recited in claim 1 of this instant application is considered as an empty tube. Since steps a) and b) of claim 1 of U.S. Patent No. 6,740,518 B1 teaches applying a sample to an array comprising a plurality of electrodes and applying an input waveform to said electrode to generate an output waveform, and U.S. Patent No. 6,740,518 B1 indicates that a circuit board comprising a plurality of electrodes (ie., the array) is in an injection molded sample chamber (see columns 102 and 103) and steps a) and b) of claim 1 of U.S. Patent No. 6,740,518 B1 must disclose applying an initiation signal (ie., an input waveform) to a an electrode within an evacuated tube (ie., an electrode from a circuit board in the injection molded sample chamber) as recited in step a) of claim 1 of this instant application. Here columns 102 and 103 of U.S. Patent No. 6,740,518 B1 only are used to support claim 1 of U.S. Patent No. 6,740,518 B1.

III. In page 8, last paragraph bridging to page 9, second paragraph of applicant's remarks, applicant argues that “[T]he Examiner cites the specification of Rubinstein to find motivation to combine a self-assembled monolayer with an array complex to form the method recited in claim 1. As stated above, for a nonstatutory double patenting rejection, the Examiner must look to the claims of the references, not to the specification, in determining *prima facie* obviousness. In reciting the teaching of Rubinstein that incorporation of a self-assemble monolayer on a metal electrode would facilitate and regulate the bonding between the modified metal surface of the electrode and a conducting polymer, the Examiner has improperly referred to the specification of Rubinstein. The Examiner has not found suggestion or motivation to combine in the claims of Duong or Rubinstein, separately or in combination, and thus has not established a *prima facie* case for obviousness”.

These arguments have been fully considered but they are not persuasive toward the withdrawal of the rejection. First, since the rejection is based on claims 1, 2, and 13 of U.S. Patent No. 6,7,40,518 B1 and the specification of Rubinstein *et al.*, and is not dependent on the specifications of both U.S. Patent No. 6,7,40,518 B1 and Rubinstein *et al.*. Second, applicant does not indicate which portion of MPEP supports her argument which the examiner cannot used the specification of the secondary reference for double patenting rejection. Third, Rubinstein *et al.*, do provide a motivation for combining claims 1, 2, and 13 of U.S. Patent No. 6,7,40,518 B1 and Rubinstein *et al.*, (see above rejection).

10. Claims 1, 5, and 8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-25 of copending

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Application No. 10/714,489. Although the conflicting claims are not identical, they are not patentably distinct from each other because the examined claims in this instant application is either anticipated by, or would have been obvious over, the reference claims. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). Although claims 1, 5, and 13 in this instant application are not identical to claims 11-25 of copending Application No. 10/714,489, claims 11-25 in copending Application No. 10/714,489 are directed to the same subject matter and fall entirely within the scope of claims 1, 5, and 8 in this instant application. In other words, claims 1, 5, and 8 in this instant application are anticipated by claims 11-25 of copending Application No. 10/714,489.

Note that, since the word “evacuate” is defined as “to empty or remove the content”, “evacuated tube” recited in claim 1 of this instant application is considered as an empty tube. Since the case 10/714,489 indicates that a circuit board comprising a plurality of electrodes (ie., the array) is in an injection molded sample chamber (see pages 122 and 123), claim 11 of 10/714,489 must disclose applying an initiation signal (ie., an input waveform) to an electrode within an evacuated tube (ie., an electrode from a circuit board in the injection molded sample chamber) as recited in of claim 1 of this instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Note that applicant does not address this issue.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. No claim is allowed.

12. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CAR § 1.6(d)). The CM Fax Center number is (571)273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Lu, Ph.D., whose telephone number is (571)272-0746. The examiner can normally be reached on Monday-Friday from 9 A.M. to 5 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla, can be reached on (571)272-0735.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Frank Lu
Primary Examiner
March 7, 2006



FRANK LU
PRIMARY EXAMINER